2. Appellant is not a member of the press. The record in this case does not place her in the class of persons who are entitled to invoke the constitutional provisions touching the freedom of the press. Moreover, she was not convicted for anything she was speaking or writing. Neither does the ordinance prohibit her from speaking or writing as her judgment may dictate. The requirement of the ordinance that she is not to distribute printed matter which others have published without a permit involves in no way the constitutional right of free speech.

3. The ordinance does restrict the right of appellant and the right of all others to distribute circulars, advertising matter and other literature in the City of Griffin, Georgia, in the absence of a permit from the City Manager. It is urged that this restraint involves a denial of due process and the equal protection of the law, in that the City Manager is clothed with unqualified discretion in granting or denying the permit. It is scarcely a denial of the equal protection of the law in that it applies in like manner to all persons. A substantial question as to due process might have been involved in the case except for the following essential facts, to-wit:

(a) Appellant failed to raise in any proper manner the issue of due process in the Trial Court. The Court of Appeals of Georgia so ruled and rightly so ruled. For this reason, the question of due process is not properly presented to this Court.

(b) Appellant did not apply to the City Manager of

Griffin, Georgia, for a permit. She is not in the position of having suffered from the exercise of the arbitrary and unlimited power of the City Manager, of which she complains. Had she made application for a permit and had she been denied one without adequate reason, her constitutional rights would have been infringed. She seeks to claim the benefit of the presumption that an application by her for a permit would have been denied. Nothing in the record justifies such an assumption. The fact that the City Manager is clothed with arbitrary power, if it be a fact that the power granted to him by the ordinance is arbitrary, affords the appellant no ground of complaint unless and until she has suffered from the exercise of this power. It is submitted that it is proper for the City of Griffin to provide by ordinance that all persons distributing materials described by the ordinance be required to apply for a permit. If so, no person desiring to engage in this activity can suffer any legal wrong by reason of the ordinance until the application for a permit has been denied. Until the contrary appears from experience, it will be presumed that all persons legally entitled to a permit will be granted one by the City Manager.

Appellee does not seek to maintain the proposition that the City of Griffin, Georgia, can constitutionally authorize its City Manager to grant or withhold these permits solely in his discretion. Had the appellant applied for one and been denied without substantial cause, a question of due process would have arisen. Even then, it would be necessary, in order to get a

hearing in this Court, for the appellant to raise this question in the manner required by the accepted rules of practice, and this she has not done.

ARGUMENT

The issues which the appellant submits for the consideration of this Court are based on the demurrer which she filed in the Trial Court, and which appears in the record as a part of her petition to the Superior Court of Spalding County, Georgia, for a writ of certiorari. The material parts of the demurrer are as follows:

> "2. Because said ordinance is contrary to and in violation of the first amendment to the Constitution of the United States, which reads:
>
> 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise therof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.'
>
> Said ordinance is also contrary to and in violation of the fourteenth amendment to the Constitution of the United States, which had the effect of making the said first amendment applicable to the States, and which reads:
>
> 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or en-

force any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.'

Said ordinance absolutely prohibits the distribution of any literature of any kind within the limits of the City of Griffin without the permission of the City Manager and thus abridges the freedom of the press, contrary to the provisions of said quoted amendments.

Said ordinance also prohibits the free exercise of petitioner's religion and the practice thereof by prohibiting the distribution of literature about petitioner's religion in violation of the terms of said quoted amendments."

The petition to Spalding Superior Court for certiorari was denied. Appellant carried her case to the Court of Appeals of Georgia, where the case was affirmed in a decision reported in 55 Ga. App. 609. In headnote 2, the Court of Appeals of Georgia passed upon the questions urged upon this Court in the following language:

"The ordinance is not unconstitutional because it abridges the freedom of the press or prohibits the distribution of literature about the petitioner's religion, in violation of the fourteenth amendment to the constitution of the United States, (Code, Secs. 1-815). See Coleman v. Griffin, 55 Ga. App. 123 (189 S. E. 427). The ordinance is not attacked

> on the ground that it arbitrarily grants to the city manager the power to grant or refuse a license at will, such power being uncontrolled by any rule or standard or provision for review."

In her demurrer, appellant attacks the constitutionality of the ordinance only on the two specified grounds that it abridges the freedom of the press and that it prohibits the free exercise of petioner's religion and the practice thereof. If the question of the due process of law is before this Court, it must be spelled out of mere general allegations that the ordinance is in conflict with the Fourteenth Amendment to the Constitution of the United States, without any particularization as to how the ordinance violates the provisions of this amendment.

It is reasonably inferable that this case had its origin in a deliberate purpose to bring this ordinance in question as an interference with the religious practices of the appellant and that all other contentions now presented are more or less afterthoughts. As appears on page 7 of appellant's brief, she testified on the trial of her case in the following words:

> "I did not ask for a permit, because I am sent by Jehovah to do His work. His law is supreme and above every human law. To apply for a permit to do His work would be an act of disobedience to His commandment. It would be an insult to the Most High which would in time result in my eternal destruction."

It is submitted that the attack on this ordinance on the ground it violates freedom of worship is not well taken. As hereinbefore pointed out, the ordinance does not in terms speak of religion or religious practices. It applies to all classes of persons equally and impartially and without reference to whether they subscribe to any religion. The ordinance prohibits certain overt acts which in and of themselves are not characteristic of any form of worship or any religious practice, but have to do with ordinary, everyday activities of the business world. The ordinance in no way limits or interferes with the right of the appellant to believe what she will or to preach as she may be inspired, or to do any one of the numerous other things which in common practice are associated with religious activities and religious worship.

She seeks to maintain the position that she has a right to propagate her faith in such manner as she may choose without interference on the part of the civil law, even though the methods she adopts may in and of themselves have no logical relation to the freedom of worship to which she is entitled. If she has the right to adopt any and all procedure she may choose in carrying on her religious activities and if the civil law must step aside whenever she conceives that one of its regulations is in her way, then the police power of the civil government is limited by her conception of what is needful and proper in the prosecution of her religious work. She might with just as much reason claim the right to stand in the middle of the principal

street of the City of Griffin and preach to a crowd gathered there, even though the effect might be to impede traffic. An ordinance regulating the distribution of circulars and advertising matter does not violate freedom of worship any more than would an ordinance which prohibits the assembly for religious worship of a crowd of people in the streets of a city. Neither ordinance would relate to religion as such. It has been held that a religious body can not successfully invoke constitutional provisions with reference to religious freedom to justify the violation of reasonable rules regulating the use of streets.

Com. vs. Plaisted,
148 Mass. 375.

Again certain groups have regarded healing by prayer as an essential feature of their religious worship. Notwithstanding this, it has been ruled that Statutes prohibiting the cure of the sick for hire by means of prayer is not a denial of the constitutional right of the free exercise and enjoyment of religious profession and worship.

Smith vs. People,
51 Colo. 271;

State vs. Marble,
72 Ohio St. 21.

It has been held that the right of religious freedom is not violated by requiring those seeking admission to

a public school to furnish the certificate of a physician as to physical condition.

Streitch vs. Board of Education,
34 S. D. 169.

Practices subversive of civil government, even though carried on in the name of religion, may constitutionally be prohibited.

State vs. Big Sheep,
75 Mont. 219.

It has been aptly said that laws are made for the government of actions and that while they cannot restrict or interfere with mere religious beliefs, they may with practices.

McMasters vs. State,
21 Okla. Crim. 318.

The fact that one conscientiously believes a given act or practice to be of a religious character does not make it so in the eyes of the law. If such act or practice is in fact of a purely secular nature, then it is subject to regulation under the police power.

Reynolds vs. United States,
98 U. S. 145;

State vs. Neitzel, 69 Wash. 567;

Com. vs. Herr,
229 Pa. St. 132.

Obviously the difficulty with this contention on the part of the appellant is that the act for which she was convicted is secular in its nature and is not, when examined in the light of logic or of common practice, religious in its character. Whatever constitutional vices may attach to this ordinance, the attack based on the ground that it interferes with religious freedom is not well taken. The thing it interferes with by its terms is not religion or any part of religion as that term is construed and applied by the law.

What has been said touching the issue of religious freedom is equally applicable to the contention that the ordinance abridges the freedom of the press. It is unnecessary to cite authority for the proposition that the first amendment to the Constitution of the United States is a limitation on the power of Congress and that its provisions are irrelevant for the purpose of testing the ordinance here under consideration. Doubtless it is true that the Fourteenth Amendment to the Constitution of the United States is sufficiently broad to protect the individual against legislation by the State or its political subdivisions which arbitrarily interferes with the freedom of religious worship, but the reliance of appellant in her demurrer on the first amendment to the Constitution of the United States is unavailing.

The record in the case does not suggest that the appellant is a member of the press or that an ordinance abridging the freedom of the press would apply to her. A person who seeks to raise the question of the consti-

tutionality of a Statute is without standing for that purpose unless he belongs to the class which is affected by the Statute.

Iroquois Transportation Co. vs.
DeLaney, etc. Co.,
205 U. S. 354;

Lee vs. State of New Jersey,
207 U. S. 67;

Fidelity & Casualty Co. of New York,
vs. Freeman, 109 Fed. 847;

Missouri, etc. Rd. Co. vs. Cade,
233 U. S. 642.

In general, constitutional guaranties touching the freedom of the press and freedom of speech were designed to prohibit restraints and limitations which at one time in English history had been imposed on the right to speak and write freely. Doubtless the primary meaning of the phrase "liberty of the press" is freedom from censorship and from restraints upon publication, especially those which were practiced in former times in monarchal and despotic governments. The freedom of the press is the right without any previous license or censorship to publish the truth.

Nothing in the ordinance here under consideration prohibits any person from publishing anything he may care to and nothing in the ordinance requires a license as a condition to such publication. Neither is there any

prohibition in the ordinance against any person speaking whatever may be in his mind. The subject-matter of the ordinance is something else altogether.

It is contended that the ordinance interferes with the free circulation of certain literature and that this is tantamount to the denial of the right to publish freely. It is not believed that this conclusion is sound. No prohibition or penalty is attached to what is printed or to the manner of the publication. The ordinance applies to certain actions involving the physical handling of printed matter. It goes no futher. To regulate the physical handling and distribution of printed matter within a city is not in and of itself a regulation of the freedom of speech or the freedom to write and publish. The ordinance applies to all persons alike and has no special application to publishers.

Doubtless it would be constitutional for the City of Griffin to adopt an ordinance prohibiting merchants from placing books and pamphlets on the sidewalks in front of their stores. Such an ordinance could scarcely be considered as having any relation to freedom of speech and freedom of worship. The ordinance now under consideration is not different in character, as respects the constitutional issue of free speech and a free press.

It is not disputed that an ordinance of the type under investigation may be open to attack as denying due process of law, where a city offical under such ordinance possesses an uncontrolled discretion to arbitra-

rily interfere with the freedom of action of the citizen. In the present case, had the appellant applied for a license and had she been refused without reasonable cause, she doubtless could have urged with much force that she had been denied due process of law. She has not placed her case on this foundation. She elected to proceed on the theory that her right to follow her religious practices according to her chosen way is superior to the civil law. She did not apply for a license. She does not know and can not know that she would have suffered from an arbitrary application of this ordinance.

Moreover, she failed to raise in a proper manner the constitutional issue of due process based on the contention that the ordinance is arbitrary. The Court of Appeals of Georgia so ruled in recognition of the well-established requirement in this connection.

Coleman vs. Griffin,
55 Ga. App. 123;

Curtis vs. Helen,
171 Ga. 256;

Jordan vs. State,
172 Ga. 857;

Palmer vs. Phinizy,
151 Ga. 589, 591.

In this state of the record the contention that the

ordinance is arbitrary and violates due process of law is not before this Court on its merits.

Louisville & Nashville Ry. Co.
vs. Woodford, 234 U. S. 46.

In the case just cited it was ruled that in order that the denial of a federal right may be the basis for reviewing a judgment of a State Court, the claim of federal right must be made in the State Court in the manner required by the State practice. On page 51 of the decision, this Court used the following language:

> "If a Federal question can be said to be involved at all, it was introduced into the record upon the argument of the motion for a new trial. Disposing of that question The Court of Appeals of Kentucky set forth that the question was not raised by the pleadings or requested instructions, or by motion for a new trial or written motion of any kind, and concluded that it must have been raised orally. It pointed out that under the Kentucky Code of Practice such contentions were required to be in writing, and that if the defendant desired to take advantage of its limited liability it must under the code of the State specifically rely upon that defense in its answer. In making this holding, the Kentucky court but enforced a rule of practice of that State. The decisions of this court not only have repeatedly held that a Federal right in order to be reviewable here must be set up and denied in the state court, but have often held that such claim of denial is not properly brought to the attention of this court where it appears that the

state court declined to pass upon the question because it was not raised in the trial court as required by the state practice. Schuyler Nat'l Bank v. Bollong, 150 U. S. 85; Erie R. R. Co. v. Purdy, 185 U. S. 148; Layton v. Missouri, 187 U. S. 356. In this case there is no reason to believe that there was an attempt on the part of the state court to evade the decision of Federal questions, duly set up, by unwarranted resort to alleged rules under local practice, and upon this point this case comes within former rulings of this court, as we have seen."

If the ordinance under investigation violated any constitutional right of the appellant, it was not that of religious freedom or the freedom of speech or of the press. She failed to raise in the proper manner for consideration by the Georgia Courts any other constitutional issue.

Respectfully submitted,

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